

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2051 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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HARISH @ HARIYO S/O.

MANILAL VORA

Versus

COMMISSIONER OF POLICE

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Appearance:

MR SG AMIN for MR PREMAL R JOSHI for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner herein challenges the order of preventive detention dated 24th September, 1998 made by the Commissioner of Police, Ahmedabad City, under the powers conferred upon him under sub-section (2) of

section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

It is alleged that the petitioner is a 'dangerous person' and his activities are prejudicial to the maintenance of public order. Two offences punishable under Chapter-XVII of the IPC have been registered against the petitioner. In both the said offences, some gold ornaments were recovered from the petitioner. Besides, the police had also recorded statements of two witnesses. In the aforesaid offences registered against the petitioner, the petitioner was arrested and was lodged in the judicial custody. The fact that the petitioner was already in the judicial custody has not affected the subjective satisfaction arrived at by the Detaining Authority. The Detaining Authority was alive to the fact that the petitioner was already in judicial custody, irrespective of his being in the judicial custody. He has considered the necessity of detaining the petitioner under the Act irrespective of his being in the judicial custody. It is observed that though the petitioner, at the relevant time, was in judicial custody, there were all the chances of his being released on bail and in that case the petitioner may continue his nefarious activities.

The only contention raised before me is : the subjective satisfaction arrived at by the Detaining Authority suffers from the vice of non-application of mind and is, therefore, vitiated. The non-application of mind is manifest from the fact that the Detaining Authority has not taken into consideration the antecedents of the petitioner and without recording his subjective satisfaction in respect of whether the petitioner would continue nefarious activities even after his release on bail. Since the subjective satisfaction recorded by the Detaining Authority is bad and illegal, as aforesaid, the consequent order of preventive detention also should be held to be bad and illegal. No other contention is raised before me.

I am unable to agree with the contention raised by Mr. Amin. While recording the subjective satisfaction, the Detaining Authority was alive to the factum of the petitioner having been arrested and lodged in judicial custody. He has actively considered the possibility of the petitioner's being released on bail. It is further observed that after his release on bail, there is a possibility of the petitioner indulging into the similar nefarious activities. Since the Detaining

Authority has actively considered this aspect also, the subjective satisfaction reached by him, can not be said to be vitiated for want of application of mind.

Petition is, therefore, dismissed. Rule is discharged.

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JOSHI